

REMARKS

At the outset, Applicants thank the Examiner for the thorough review and consideration of the subject application.

In the Non-Final Office Action dated May 27, 2004, the Examiner accepted the drawings as informal and acceptable for examination purposes but required prompt submission of drawing corrections; rejected claims 1-7 and 9-12 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter; and rejected claims 1-20 under 35 U.S.C. § 102(a) as being anticipated by Cppress.com (PTO-892 Ref U of Paper No. 10).

Applicants hereby present a set of Corrected Drawings for the Examiner's review and approval (see Appendix, attached to page 9 of this paper), respectfully submit that the Drawings now more clearly conform to the standards required by the U.S. Patent & Trademark Office, and request withdrawal of the present objection to the drawings.

The rejection of claims 1-7 and 9-12 under 35 U.S.C. § 101, because the claimed invention is directed to non-statutory subject matter, is traversed and reconsideration is respectfully requested.

35 U.S.C. § 101 provides "Whoever invents... any new and useful process... or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." The three judicially-created categories of claims that are considered to be unpatentable constitute abstract ideas, laws of nature, and natural phenomena. These three exclusions recognize that subject matter which is not a practical application or use of an abstract idea, a law of nature, or a natural phenomenon is not patentable. However, a process employing, for example, an abstract idea may be patentable even though the underlying idea, by itself, is not patentable. *In re Alappat*, 33 F.3d 1526, 31 USPQ 1545 (Fed. Cir. 1994) (*en banc*).

According to M.P.E.P. § 2106, the “usefulness” requirement is made to limit patent protection to inventions that possess a certain level of “real world” value (i.e., something that is concrete, tangible, and useful), and not something that represents nothing more than an idea or concept. Therefore, it is respectfully submitted that any analysis used to reject claims under 35 U.S.C. § 101, for being directed to non-statutory subject matter, failing to establish that the claimed invention lacks any practical application of the alleged abstract idea is incomplete and thus inconclusive.

In rejecting claims 1-7 and 9-12 under 35 U.S.C. § 101, the Examiner asserts “[t]he invention as recited in the claims is merely an abstract idea” and “[m]ere recitation in the preamble... [i.e., ‘A method of providing agricultural pesticides’] (i.e., intended use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea.”

Applicants respectfully submit, however, that merely asserting a claim as an abstract idea does not make it so. “Processing data” is an abstract idea. The claim 1, however, does not merely recite “processing data.” To reiterate, claim 1 recites “inputting into a computer... the identity of a pest existing on a property... [inputting into the computer] the identity of a plant or crop existing on the property... [inputting into the computer] the location of the property; and executing an algorithm for generating therefrom instructions for choosing a pesticide registered in said location to protect said plant or crop from said pest.” Moreover, even if it could be reasonably established that the aforementioned claimed elements were abstract ideas, Applicants respectfully submit the Examiner has failed to establish that the presently claimed invention, as a whole, lacks any practical application. For at least this reason, Applicants respectfully request withdrawal of the present rejection under 35 U.S.C. § 101.

The rejection of claims 1-20 under 35 U.S.C. § 102(a) as being anticipated by Cppress.com is traversed and reconsideration is respectfully requested.

Claim 1 is allowable over Cppress.com in that claim 1 recites a combination of elements including, for example, “inputting into a computer... the identity of a pest existing on a property... [inputting into the computer] the identity of a plant or crop existing on the property... [inputting into the computer] the location of the property; and executing an algorithm for generating therefrom instructions for choosing a pesticide registered in said location to protect said plant or crop from said pest.” Cppress.com fails to teach, either expressly or inherently, at least these features of the claimed invention. Thus, Applicants respectfully submit that claims 2-12, which depend from claim 1, are also allowable over Cppress.com.

As set forth in M.P.E.P. § 2112, the express, implicit, and inherent disclosures of a reference may be relied upon in the rejection of claims under 35 U.S.C. § 102. However, the fact that a certain characteristic may be present in the reference is not sufficient to establish the inherency of that characteristic. In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied reference.

Nevertheless, in rejecting claim 1, the Examiner cites Cppress.com as allegedly teaching “inputting into a computer: [t]he identity of a pest existing on a property... [t]he identity of a plant... existing on the property... the location of the property... and [e]xecuting an algorithm for generating therefrom instructions for choosing a pesticide registered in said location to protect said plant or crop from said pest (Page 1, ‘View all of the above plus: Product Summaries’ and Page 3).” Applicants respectfully disagree.

Page 1 of Cppress.com merely indicates that a subscriber of “Premium Services” can, in addition to labels, supplemental labels, and MSDSs, view “Product Summaries (EPA Numbers, crop/site and pest uses, etc.)” and “State Registration Information.” Moreover, Page 3 of Cppress.com merely indicates that a service is provided whereby “pesticide product information (labels, supplemental labels, and MSDSs) provided directly by the pesticide companies [is compiled] in an unbiased presentation, adding extensive features to help users locate the specific information they need. We make this information available directly through books, CD-ROMs, and the Internet....” Applicants respectfully submit, however, the fact that a subscriber may view “Product Summaries” and “State Registration Information” does not, without more, indicate that the algorithm, as presently set forth in the claim, is executed. Moreover, that the information can be provided to subscribers via books as equivalently via the Internet, Page 3 of Cppress.com actually teaches away from the Examiner’s unfounded inference that Cppress.com inherently teaches execution of the algorithm as presently claimed. For at least the aforementioned reasons, Applicants respectfully submits that the cited teachings of Cppress.com simply do not anticipate “executing an algorithm for generating... instructions [based on an input identity of a pest on a property, an input identity of a plant/crop on the property, and the location of the property] for choosing a pesticide registered in said location to protect said plant or crop from said pest.”

In view of the above, Applicants respectfully submit Cppress.com fails to teach, either expressly or inherently, at least the aforementioned combination of elements. Moreover, the Examiner has failed to provide any basis in fact and/or technical reasoning that would lead one to reasonably conclude that the presently claimed invention is necessarily found, 100% of the time,

in Cppress.com. Consequently, withdrawal of the present rejection under 35 U.S.C. § 102(a) is respectfully requested.

Claim 13 is allowable over Cppress.com in that claim 13 recites a combination of element including, for example, “a memory for storing... a plant database[,]... a pest database[,]... a pesticide database; and location database; and... a processor connected to the memory and being configured to generate instructions regarding which pesticides in the pesticide database are registered for use in a location within the location database and can be used to protect a plant in the plant database from a pest in the pest database.” Cppress.com fails to teach, either expressly or inherently, at least these features of the claimed invention. Accordingly, Applicants respectfully submit that claims 14-20, which depend from claim 13, are also allowable over Cppress.com.

The Examiner rejects claim 13 under the same rationale as set forth in claim 1. Applicants respectfully submit, however, that Cppress.com fails to inherently teach a memory storing a plant database, a pest database, a pesticide database, a location database, and a processor configured to generate instructions regarding which pesticides in the pesticide database are registered for use in a location within the location database, as recited in claim 13.

In view of the above, Applicants respectfully submit Cppress.com fails to teach, either expressly or inherently, at least the aforementioned combination of elements. Moreover, the Examiner has failed to provide any basis in fact and/or technical reasoning that would lead one to reasonably conclude that the presently claimed invention is necessarily found, 100% of the time, in Cppress.com. Consequently, withdrawal of the present rejection under 35 U.S.C. § 102(a) is respectfully requested.

In the “Response to Arguments” section of the present Office Action, the Examiner indicates that the arguments presented in the Reply under 37 C.F.R. § 1.111, filed April 6, 2004, and duplicated above, fail to comply with 37 C.F.R. 1.111(b) because they allegedly amount “to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.” Applicants respectfully disagree.

It is respectfully submitted that the phrase “these claims are patentable over the applied references” is a general allegation of patentability. However, the previously presented arguments, and as duplicated above, (i.e., that claim 1 is allowable over Cppress.com in that claim 1 recites a combination of elements including, for example, “inputting into a computer... the identity of a pest existing on a property... [inputting into the computer] the identity of a plant or crop existing on the property... [inputting into the computer] the location of the property; and executing an algorithm for generating therefrom instructions for choosing a pesticide registered in said location to protect said plant or crop from said pest; and that claim 13 is allowable over Cppress.com in that claim 13 recites a combination of element including, for example, “a memory for storing... a plant database[,].... a pest database[,].... a pesticide database; and location database; and... a processor connected to the memory and being configured to generate instructions regarding which pesticides in the pesticide database are registered for use in a location within the location database and can be used to protect a plant in the plant database from a pest in the pest database”) specifically point out the specific distinctions Applicants believe to render the claims patentable over Cppress.com.

Further, the previously presented arguments, and as duplicated above, specifically point out how the language of the claims patentably distinguishes them from the applied references in

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stating that "Cppress.com fails to teach, either expressly or inherently, at least these features of the... invention [claimed in claims 1 and 13]".

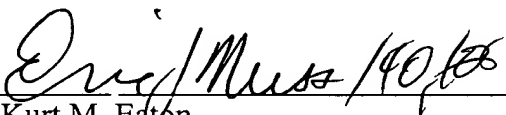
Therefore, Applicants respectfully submit the arguments presented thus far are fully responsive and do not constitute a general allegation of patentability as asserted by the Examiner.

If the Examiner deems that a telephone call would further the prosecution of this application, the Examiner is invited to call the undersigned at (202) 496-7500. All correspondence should continue to be sent to the below-listed address.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. § 1.136, and any additional fees required under 37 C.F.R. § 1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911. A duplicate copy of this paper is provided.

Dated: September 10, 2004

Respectfully submitted,

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Amendments to the Drawings:

The attached sheets of drawings include changes to Figures 3-5. These sheets, which include Figures 3-5, replace the original sheets including Figures 3-5. The attached sheet of drawings correct the informalities set forth in the Office Action dated May 27, 2004.

Attachment: Replacement Sheets